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E-filing

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 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN JOSE DIVISION

11  
 12 SECURITIES AND EXCHANGE COMMISSION,

C 06 2239  
 Civil Action No.

13 Plaintiff,

COMPLAINT

14 v.

15 THOMAS A. SKOULIS, PETER M. FRANKL,  
 16 ALAN B. LEFKOF and WILLIAM D. BAKER

17 Defendants.

PVT

18  
 19  
 20 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

21 SUMMARY OF THE ACTION

22 1. This matter arises out of a financial reporting fraud scheme at Netopia, Inc. ("Netopia"  
 23 or the "Company"), an Emeryville, California corporation that provides broadband and wireless  
 24 products and services. In 2002 and again in 2003, Netopia improperly reported revenue on two major  
 25 software deals with a thinly capitalized customer who did not have the legal obligation to pay for the  
 26 software. As a result, Netopia reported inflated revenue in two fiscal quarters and posted its first  
 27 profitable quarter in over three years.

28 2. In both instances, Netopia's former head of worldwide sales, Thomas A. Skoulis, and

1 former head of software sales, Peter M. Frankl, arranged for the customer, a software reseller, to place  
2 major orders with Netopia, while at the same time agreeing with the customer in undisclosed "side  
3 agreements" that the reseller would not have a firm obligation to pay Netopia for the software. For  
4 each transaction, Netopia improperly reported approximately \$750,000 in revenue that was only due  
5 if and when Netopia's reseller customer was paid by an end user according to the side arrangements.

6 3. Also, for the first transaction, Netopia's then Chief Financial Officer William D. Baker  
7 improperly authorized the Company to report the \$750,000 of revenue notwithstanding evidence that  
8 collection by Netopia was not probable.

9 4. In later efforts by Netopia to collect payment on the second transaction, first Baker and  
10 then later Netopia Chief Executive Officer Alan B. Lefkof learned of the payment contingency  
11 contained in the side agreement, but they failed to take immediate corrective action. As a result,  
12 Lefkof and Baker allowed the Company to publicly treat the unpaid contract as a bad debt, and to  
13 avoid reporting that Netopia had improperly inflated its revenue for the fiscal quarter and year ended  
14 September 30, 2003.

#### 15 JURISDICTION AND VENUE

16 5. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the  
17 Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and  
18 21(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and 78u(e)].

19 6. This Court has jurisdiction over this action pursuant to Sections 20(c) and 22(a) of the  
20 Securities Act [15 U.S.C. §§ 77t(c) and 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §  
21 78aa]. The defendants, directly or indirectly, have made use of the means and instrumentalities of  
22 interstate commerce, of the mails, or of the facilities of a national securities exchange in connection  
23 with the acts, practices and courses of business alleged in this complaint.

24 7. Venue is proper in this District pursuant to Section 22 of the Securities Act [15 U.S.C.  
25 § 77v], and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Skoulis, Baker and Lefkof reside in  
26 and acts or transactions constituting violations occurred in the Northern District of California.

INTRADISTRICT ASSIGNMENT

8. Assignment to the San Jose Division is appropriate pursuant to Civil Local Rules 3-2(c) and 3-2(d) because acts and omissions giving rise to the Commission's claims occurred, among other places in this district, in Santa Clara County.

DEFENDANTS

9. Thomas A. Skoulis, age 49, resides in Menlo Park, California. At the time of the events alleged in the complaint, Skoulis was the Senior Vice President of Sales and an officer of Netopia. In that position, Skoulis had responsibility for overseeing sales at Netopia. Skoulis was fired by Netopia.

10. Peter M. Frankl, age 38, resides in Addison, Texas. At the time of the events alleged in the complaint, Frankl was the Vice President of Sales and Marketing at Netopia, where he was responsible for managing software sales. Frankl reported to Skoulis. Frankl was fired by Netopia.

11. Alan B. Lefkof, age 52, resides in Tiburon, California. At the time of the events alleged in the complaint, Lefkof was the President, Chief Executive Officer and a member of the board of directors of Netopia. Lefkof currently still holds those positions.

12. William D. Baker, age 59, resides in Fremont, California, and was a licensed Certified Public Accountant in the State of Indiana. At the time of the events alleged in the complaint, Baker was the Senior Vice President of Finance and Operations and the Chief Financial Officer of Netopia. Baker was asked to resign by Netopia.

RELEVANT ENTITY

13. Netopia is a Delaware corporation headquartered in Emeryville, California. During the time the events described herein occurred, Netopia maintained other offices, including an office in Santa Clara County. Netopia develops, markets and supports broadband and wireless products and services including both computer hardware and software. At the time of the events alleged in this complaint, Netopia had common stock registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)], which was listed on the NASDAQ National Market.

FACTUAL ALLEGATIONS

Netopia Enters into a Software Transaction in its Third Fiscal Quarter Ended June 30, 2002  
Subject to an Undisclosed Payment Contingency

14. In 2002, Netopia's software sales force, led by head of worldwide sales, defendant Skoulis, and head of software sales, defendant Frankl, began negotiating the Company's first sale to Interface Computer Communications ("ICC"), a small software reseller that intended to resell Netopia's software to a public school district. ICC was a new customer to Netopia, with whom Netopia had not previously conducted business.

15. On May 23, 2002, in Netopia's third fiscal quarter, ICC issued a \$1.6 million order to purchase software from Netopia. The order represented one of the largest single orders for software Netopia had received to date.

16. During negotiations, ICC's president informed Frankl that if ICC was not paid by its own customer, ICC could not pay Netopia. Frankl told Skoulis that ICC would not pay Netopia unless and until ICC received a purchase order from the end user of the software, the public school district.

17. The purchase order ICC submitted to Netopia stated on its face that ICC would make two payments and that the "second payment [would] be made upon receipt of a second PO [Purchase Order] from Board of Education...PO should be received in July and payment can be made in August." Skoulis and Frankl each saw the ICC purchase order, which indicated that ICC's obligation to pay Netopia was contingent on future events, and not a fixed certainty.

18. Frankl concealed the contingency from others at Netopia by directing that the contingency language be physically redacted – "whited out" – from the face of ICC's purchase order. Frankl knew that a purchase order with the contingency language would be rejected by Netopia's order management department because Netopia could not record the sale as revenue during that reporting period with the payment contingency. Netopia's order management personnel entered the ICC order into the system based on the redacted purchase order.

19. By reporting revenue on this transaction, Netopia violated Generally Accepted Accounting Principles ("GAAP"), the accounting standards that public reporting companies must

1 follow in the United States. Since payment by ICC to Netopia was contingent upon ICC's receipt of  
2 its payment from its own customer, the transaction failed the GAAP requirement that ICC have a  
3 fixed obligation to pay Netopia at the time Netopia recorded revenue from the transaction.

4 20. Even apart from this contingency, members of Netopia's finance department informed  
5 Baker that ICC did not have the financial strength to qualify for a \$1.6 million line of credit. A credit  
6 check performed by Netopia indicated that ICC qualified for at most \$15,000 in credit -- far lower  
7 than the \$1.6 million order. Pursuant to GAAP, a company cannot report revenue if it is not probable  
8 that the company will be able to collect its purchase price from its customer. Baker nevertheless  
9 authorized the recognition of revenue.

10 21. ICC paid Netopia the first installment of approximately \$800,000 in late June 2002,  
11 the last month of Netopia's third quarter, after ICC's school district customer made a payment to ICC.

12 22. On August 14, 2002, Netopia filed with the Commission a quarterly report on Form  
13 10-Q for the third quarter ended June 30, 2002. The financial statements in Netopia's quarterly report  
14 improperly included approximately \$750,000 in revenue -- web platform licenses and services  
15 revenue -- from the ICC transaction. At the time Netopia booked this revenue, collection by Netopia  
16 on the remaining balance was not probable and ICC did not have an obligation to pay, and therefore  
17 reporting the \$750,000 in revenue was improper and violated GAAP. As a result, Netopia's revenue  
18 was inflated by 13.7 percent and its operating loss was understated by 13 percent. Netopia also  
19 publicly announced the same falsely inflated third quarter financial results on July 23, 2002 in a press  
20 release.

21 23. Consistent with the side arrangement, ICC did not pay the remaining balance described  
22 in its purchase order to Netopia until months later, in September 2002, after ICC had received a  
23 further payment from its school district customer.

24 24. Skoulis and Frankl knew, or were reckless in not knowing, that their undisclosed side  
25 agreement with ICC altering the terms of the purchase order, and their concealment of the payment  
26 contingency, would result in Netopia materially misstating its financial results to the public.  
27 Separately, Baker knew, or was reckless in not knowing, that reporting revenue on the transaction was  
28 improper because Netopia did not have a reasonable basis to believe that it would collect from ICC.

Netopia Negotiates a Second Improper Transaction with ICC in the Fourth Fiscal  
Quarter Ended September 30, 2003

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25. In 2003, Netopia and ICC were discussing another possible software transaction for a different school district. Based on early discussions, Skoulis included a \$750,000 sale to ICC in his forecast for sales to be completed by Netopia during the fourth quarter ending September 30, 2003. However, as the end of Netopia's fiscal year drew to a close, Frankl informed Skoulis that ICC would not be placing the \$750,000 order by the end of the reporting period because the scope of ICC's intended project with their customer had changed. This larger deal was in the preliminary stages. Skoulis nevertheless directed Frankl to obtain a purchase order from ICC for \$750,000, the amount he had forecast.

26. On September 30, 2003, the final day of Netopia's 2003 fiscal year, ICC sent a purchase order to Netopia for the purchase of software in the amount of \$750,400. However, ICC made the purchase order subject to another, undisclosed side agreement that materially altered the terms stated in ICC's purchase order.

27. Under the terms of the side agreement, Frankl and Skoulis agreed, as a basis for ICC submitting the \$750,400 purchase order to Netopia, that ICC would not pay Netopia unless and until ICC received a contract from ICC's school district customer. At the time, ICC had not yet obtained a contract from the school district.

28. In early October 2003, in response to receiving a routine audit request from Netopia's outside auditors asking that ICC confirm the terms of the September 2003 purchase order, ICC sent a letter to Frankl confirming the side agreement.

29. ICC stated in the letter, dated October 7, 2003, that ICC's September 2003 purchase order "is only valid upon ICC's receipt of a Purchase Order" from ICC's intended customer, a public school district. ICC further stated that if the school district "decides at any point that they are no longer interested in the Purchase of [Netopia software], ICC will not be held liable or accountable for [its] Purchase Order" submitted to Netopia on September 30, 2003.

1           30. Frankl discussed the ICC side letter with Skoulis. Skoulis instructed Frankl not to  
2 show the side letter to anyone else. Frankl kept the side letter in his desk drawer and did not forward  
3 it to Netopia's finance department, including the Company's order management personnel.

4           31. Nevertheless, as part of the fraudulent scheme, Frankl, at Skoulis' urging, contacted  
5 ICC's president and reaffirmed the side agreement: that ICC did not have to pay Netopia for the  
6 September 2003 order until ICC was paid by its own customer.

7           32. Netopia recorded approximately \$750,000 in revenue from the ICC purchase order for  
8 the fourth quarter, although the payment contingency made it improper to do so under GAAP. As  
9 with the earlier ICC transaction, recording revenue on a purchase order that was subject to a payment  
10 contingency violated the GAAP requirement that the purchaser's payment obligation be fixed at the  
11 time Netopia recorded the revenue.

12           33. On December 19, 2003, Netopia filed with the Commission its annual report on Form  
13 10-K for the fiscal year ended September 30, 2003, which included financial statements that were  
14 improperly inflated by the approximately \$750,000 in revenue -- web platform and services revenue --  
15 from the ICC order. As a result, Netopia's revenue for the fourth quarter was overstated by 16  
16 percent. The financial statements in the Form 10-K also materially overstated revenue based on the  
17 order. Netopia reported quarterly income of approximately \$300,000 -- the Company's first profit  
18 since the quarter ended June 30, 2000. Without the falsely reported ICC transaction, Netopia's  
19 income would have actually reflected a loss of more than \$400,000 for that quarter. Netopia publicly  
20 announced its falsely inflated quarterly revenue and income in a November 5, 2003 press release.

21           34. Skoulis and Frankl knew, or were reckless in not knowing, that the undisclosed side  
22 agreements with ICC altering the terms of the purchase orders, and their concealment of the payment  
23 contingencies from others, would result in Netopia materially misstating its financial results to the  
24 public.

25           Lefkof and Baker Learn of the Payment Contingency in 2004

26           35. Netopia CEO Lefkof and then-CFO Baker subsequently learned of the side agreement  
27 with ICC. Nonetheless, as described below, they failed to take prompt corrective action, allowing the  
28 Company to avoid reporting to the public that Netopia had improperly inflated its revenue for the



1 fourth quarter and its revenue for the year ended September 30, 2003 and understated its loss for the  
2 same period.

3 36. In October 2003, Skoulis asked his superiors to approve extending typical payment  
4 terms for the September 2003 purchase order. Extending the payment terms helped, for a time, to  
5 conceal from Netopia's finance personnel and outside auditors the undisclosed payment contingency  
6 in the side agreement because the finance personnel delayed taking steps to try to collect from ICC.

7 37. By April 2004 – over six months after the second sale to ICC – ICC had yet to pay any  
8 of the \$750,000 it supposedly owed Netopia. At Lefkof's direction, Baker, accompanied by Skoulis,  
9 met with ICC's president. During the meeting, Baker learned of the improper side agreement making  
10 payment contingent on ICC reselling the product to the school district (an event which had yet to  
11 transpire).

12 38. Baker subsequently attended a meeting of Netopia's Audit Committee on April 19,  
13 2004. Although ICC was discussed, Baker failed to report the payment contingency. Instead, Baker  
14 agreed that he would try to obtain a payment schedule from ICC.

15 39. On April 27, 2004, ICC sent Baker a proposed payment schedule expressly providing  
16 that such payments would be contingent on ICC's receipt of payments from the end user school  
17 district. Baker asked Frankl to have the ICC email establishing the payment schedule "cleaned up" so  
18 that the document did not contain the contingent payment language.

19 40. Frankl emailed ICC with instructions to "cut and paste" the payment schedule he  
20 provided into an email to Baker eliminating the contingent language. Based on Frankl's instructions,  
21 ICC provided an email that had no reference to the end user school district and did not contain the  
22 contingent payment language.

23 41. On May 6, 2004, Baker falsely informed the Audit Committee that there was a firm  
24 payment schedule and that ICC would have the cash available on the dates in the schedule to make  
25 the payments. On June 18, 2004, after ICC failed to make the payments in accordance with the April  
26 payment schedule, Netopia sent a demand letter to ICC. In response, ICC informed Netopia's  
27 controller, who in turn informed Lefkof, that ICC refused to pay Netopia and claimed that the  
28 September purchase order was not valid.



42. Two weeks later, on July 2, ICC provided a copy of the October 7, 2003 side letter to Netopia, a copy of which was received by Lefkof.

Lefkof and Baker Allow the Company to Issue a False Press Release on July 6, 2004

43. On July 6, 2004, Lefkof and Baker participated in an Audit Committee meeting to review a press release that Netopia planned to issue later that day. Among other things, the press release announced that the Company was going to write off the ICC receivable as a bad debt. Both Lefkof and Baker understood that a write-off would only be appropriate if the ICC transaction was properly recorded as revenue in the first instance; the side letter, however, suggested that the transaction was improperly recorded, and that the Company's financial statements for the year ended September 30, 2003 might need to be restated. Nonetheless, during this meeting, neither Lefkof nor Baker mentioned the side letter or the contingency to the Audit Committee members.

44. Instead, the Audit Committee approved the press release, which was issued by Netopia on July 6, 2004, and filed with the Commission as an exhibit to a current report on Form 8-K signed by both Lefkof and Baker.

Subsequent Events and the Restatement

45. On July 12, 2004, Netopia's Audit Committee obtained a copy of the October 7, 2003 side letter modifying ICC's September 2003 purchase order.

46. On July 22, 2004, after the close of the market, Netopia announced that the board's Audit Committee was conducting an internal investigation. The next trading day after the Company made the announcement, the closing price of its common stock fell from \$4.31 per share to \$3.60 (a 16 percent decline).

47. On February 1, 2005, following the internal investigation by Netopia's Audit Committee, Netopia announced it was restating its financial statements due to the two improperly recorded software transactions (as well as other unrelated items). For the first ICC transaction, recorded as revenue in the quarter ended June 30, 2002, Netopia eliminated \$750,000 of software license revenue, deferring \$632,000 of such revenue to the following quarter. After elimination of the improperly recorded revenue from the 2002 ICC transaction, Netopia's restated software revenue for the second quarter ended June 30, 2002 declined to \$4.7 million, or by approximately 13.7 percent

1 from the originally reported revenue. Similarly, Netopia's restated operating loss for that period  
2 increased by approximately 13 percent, to \$5.7 million.

3 48. For the second ICC transaction, recorded as revenue in the fourth quarter ended  
4 September 30, 2003, Netopia eliminated software license, maintenance and deferred revenue of  
5 \$750,400. Consequently, Netopia's overall restated revenue for the fourth quarter of 2003 declined to  
6 \$3.9 million from what the Company had previously reported, or by approximately 16 percent.  
7 Eliminating the revenue from the ICC transaction resulted in Netopia reporting an operating loss of  
8 approximately \$400,000 for the fourth quarter of 2003, rather than the previously-reported profit of  
9 approximately \$300,000.

#### 10 Skoulis and Frankl Were Unjustly Enriched by their Fraudulent Scheme

11 49. During the period from 2002 through 2004, Skoulis and Frankl were unjustly enriched  
12 by their conduct at Netopia, including compensation from Netopia. In addition, Skoulis and Frankl  
13 sold Netopia common stock during and immediately after their participation in the fraud. Skoulis  
14 sold approximately 47,500 shares of Netopia stock. Frankl sold approximately 5,000 shares of  
15 Netopia stock.

#### 16 FIRST CLAIM FOR RELIEF

17 (Violations of Section 10(b) of the Exchange Act and  
18 Rule 10b-5 Thereunder by Skoulis, Frankl and Baker)

19 50. The Commission realleges and incorporates by this reference Paragraphs 1 through 49,  
20 above.

21 51. By engaging in the conduct described above, Skoulis, Frankl and Baker, directly or  
22 indirectly, in connection with the purchase or sale of securities, by the use of means or  
23 instrumentalities of interstate commerce, or the mails, with scienter:

- 24 (a) employed devices, schemes, or artifices to defraud;
- 25 (b) made untrue statements of material facts or omitted to state material facts  
26 necessary in order to make the statements made, in the light of the  
27 circumstances under which they were made, not misleading; and  
28

(c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

52. By reason of the foregoing, Skoulis, Frankl and Baker have violated, and unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

#### SECOND CLAIM FOR RELIEF

(Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder by Skoulis and Frankl)

53. The Commission realleges and incorporates by this reference Paragraphs 1 through 49, above.

54. By engaging in the conduct described above, Netopia, Skoulis and Frankl, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or the mails, with scienter:

(a) employed devices, schemes, or artifices to defraud;

(b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

55. Skoulis and Frankl knowingly provided substantial assistance to violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5], and therefore are liable as aiders and abettors pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

56. Unless restrained and enjoined, Skoulis and Frankl will continue to violate and aid and abet violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

THIRD CLAIM FOR RELIEF

(Violations of Section 17(a) of the Securities Act by Baker)

57. The Commission realleges and incorporates by this reference Paragraphs 1 through 49, above.

58. By engaging in the conduct described above, Baker, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails with scienter:

(a) employed devices, schemes, or artifices to defraud;

(b) obtained money or property by means of untrue statements of material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers.

59. By reason of the foregoing, Baker violated, and unless restrained and enjoined, will continue to commit violations of, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

FOURTH CLAIM FOR RELIEF

(Violations of Sections 17(a)(2) and (3) of the Securities Act by Lefkof)

60. The Commission realleges and incorporates by this reference Paragraphs 1 through 49, above.

61. By engaging in the conduct described above, Lefkof, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails:

(a) obtained money or property by means of untrue statements of material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(b) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchasers.

62. By reason of the foregoing, Lefkof has violated, and unless restrained and enjoined, will continue to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)].

#### FIFTH CLAIM FOR RELIEF

(False Statements and Omissions to Accountants and Auditors—  
Violation of Rule 13b2-2 by Baker)

63. The Commission realleges and incorporates by this reference Paragraphs 1 through 49, above.

64. By engaging in the acts and conduct alleged above, Baker, directly or indirectly, knowingly made or caused to be made a materially false or misleading statements or omitted to state or caused another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with an audit or examination of the financial statements of Netopia required to be made or the preparation or filing of reports required to be filed by Netopia with the Commission.

65. By reason of the foregoing, Baker has violated and, unless restrained and enjoined, will continue to violate Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

#### SIXTH CLAIM FOR RELIEF

(False Periodic Reports—Aiding and Abetting Violations  
of Section 13(a) of the Exchange Act and Rules 12b-20,  
13a-1 and 13a-13 Thereunder by Skoulis and Frankl)

66. The Commission realleges and incorporates by this reference Paragraphs 1 through 49, above.

67. Based on the conduct alleged above, Netopia violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13], which obligate issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to file with the Commission accurate annual and quarterly reports.

68. By engaging in the conduct alleged above, Skoulis and Frankl knowingly provided substantial assistance to Netopia's filing of materially false and misleading reports with the Commission.

69. By reason of the foregoing, Skoulis and Frankl aided and abetted violations by Netopia of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13]. By reason of the foregoing, Lefkof and Baker have aided and abetted violations by Netopia of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-11 thereunder [17 C.F.R. §§ 240.12b-20, and 240.13a-11] and Baker has also aided and abetted violations by Netopia of Rule 13a-13 thereunder [17 C.F.R. §240.13a-13]. Unless restrained and enjoined, Skoulis, Frankl, Lefkof and Baker will continue to aid and abet such violations.

#### SEVENTH CLAIM FOR RELIEF

(Inaccurate Books and Records—Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act by Skoulis, Frankl, Lefkof and Baker)

70. The Commission realleges and incorporates by this reference Paragraphs 1 through 49, above.

71. Based on the conduct alleged above, Netopia violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which obligates issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78f] to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

72. By engaging in the conduct alleged above, Skoulis, Frankl, Lefkof and Baker knowingly provided substantial assistance to Netopia's failure to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect its transactions and dispositions of its assets.

73. By reason of the foregoing, Skoulis, Frankl, Lefkof and Baker have aided and abetted violations by Netopia of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]. Unless restrained and enjoined, Skoulis, Frankl, Lefkof and Baker will continue to aid and abet such violations.

EIGHTH CLAIM FOR RELIEF

(Inadequate Internal Accounting Controls—Aiding and Abetting  
Violations of Section 13(b)(2)(B) of the Exchange Act by Lefkof and Baker)

74. The Commission realleges and incorporates by this reference Paragraphs 1 through 49,  
above.

75. Based on the conduct alleged above, Netopia violated Section 13(b)(2)(B) of the  
Exchange Act [15 U.S.C. § 78m(b)(2)(B)], which obligates issuers of securities registered pursuant to  
Section 12 of the Exchange Act [15 U.S.C. § 78l] to devise and maintain a sufficient system of  
internal accounting controls.

76. By engaging in the conduct alleged above, Lefkof and Baker knowingly provided  
substantial assistance to Netopia's failure to devise and maintain a sufficient system of internal  
accounting controls.

77. By reason of the foregoing, Lefkof and Baker have aided and abetted violations by  
Netopia of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)]. Unless restrained  
and enjoined, Lefkof and Baker will continue to aid and abet such violations.

NINTH CLAIM FOR RELIEF

(Circumventing Internal Accounting Controls—Violation of  
Section 13(b)(5) of the Exchange Act by Skoulis, Frankl and Baker)

78. The Commission realleges and incorporates by this reference Paragraphs 1 through 49,  
above.

79. By the conduct alleged above, Skoulis, Frankl and Baker violated Section 13(b)(5) of  
the Exchange Act [15 U.S.C. § 78m(b)(5)] which prohibits anyone from knowingly circumventing a  
system of internal accounting, or knowingly falsifying certain books, records, and accounts.

80. Unless restrained and enjoined, Skoulis, Frankl and Baker will continue to violate  
Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

TENTH CLAIM FOR RELIEF

(Falsifying Books and Records --- Violation of Rule 13b2-1 of the  
Exchange Act by Skoulis, Frankl, Lefkof and Baker)

81. The Commission realleges and incorporates by this reference Paragraphs 1 through 49,  
above.



82. By engaging in the conduct described above, Skoulis, Frankl, Lefkof and Baker falsified or caused to be falsified Netopia's books, records and accounts in violation of Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

83. Skoulis, Frankl, Lefkof and Baker have violated and, unless restrained and enjoined, will continue to violate, Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

ELEVENTH CLAIM FOR RELIEF  
(False Sarbanes-Oxley Certifications – Violation  
of Rule 13a-14 under the Exchange Act by Baker)

84. The Commission realleges and incorporates by reference Paragraphs 1 through 49, above.

85. As Netopia's Chief Financial Officer, defendant Baker signed false certifications pursuant to Rule 13a-14 under the Exchange Act [17 C.F.R. § 240.13a-14] which were included in Netopia's quarterly report on Form 10-Q for the quarter ended March 31, 2004. In such certification, defendant Baker falsely stated, among other things, that: (a) the report did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; (b) the financial statements, and other financial information included in the report, fairly presented in all material respects the financial condition, results of operations, and cash flows of Netopia as of, and for, the period presented in the report; and (c) he had disclosed to Netopia's auditors all significant deficiencies in the design or operation of Netopia's internal controls and any fraud, whether or not material, that involved management or other employees who had a significant role in Netopia's internal controls.

86. By reason of the foregoing, Baker has violated and, unless restrained and enjoined, will continue to violate Exchange Act Rule 13a-14 [17 C.F.R. §240.13a-14].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

## I.

Permanently enjoin Skoulis and Frankl from directly or indirectly violating Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Rules 10b-5 and 13b2-1 thereunder [17 C.F.R. §§ 240.10b-5 and 240.13b2-1], and from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. 78m(a) and 78m(b)(2)(A)] and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13];

## II.

Permanently enjoin Lefkof from directly or indirectly violating Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)], and Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1], and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), 78m(b)(2)(B)] and Rules 12b-20 and 13a-11 [17 C.F.R. §§ 240.12b-20 and 240.13a-11] thereunder;

## III.

Permanently enjoin Baker from directly or indirectly violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. § 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2], and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)], and Rules 12b-20, 13a-11, 13a-13, and 13a-14 [17 C.F.R. §§, 240.12b-20, 240.13a-11, 240.13a-13, and 240.13a-14] thereunder;

## IV.

Prohibit Skoulis and Baker, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from serving as an officer or director of any entity having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];

## V.

Order defendants Skoulis and Frankl to disgorge any wrongfully obtained benefits, including prejudgment interest.

VI.

Order Skoulis, Frankl, Lefkof and Baker to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

VII.

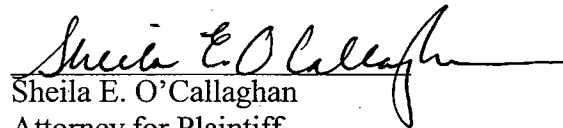
Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VIII.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: March 28, 2006

Respectfully Submitted,



Sheila E. O'Callaghan  
Attorney for Plaintiff

SECURITIES AND EXCHANGE COMMISSION